Participant-Directed Programs Policy Collaborative (PDPPC)

Draft Minutes for approval at December 2015 PDPPC Meeting

Date and Time: Wednesday, **November 18, 2015** 1:00 pm – 4:00 pm

Location: Hosting, Inc., 900 S. Broadway 3rd Floor, Denver, CO. (**small training room!)**

Executive Summary: *In this meeting we had a discussion with budget about projections for expansion of IHSS into the SLS and CHCBS waivers. We also discussed implementation of the Fair Labor Standards Act (FLSA) and discussed some of the IRS exemptions available to clients. We discussed the rule for two attendants and strategies for finding attendants. We discussed the need to have a tracking sheet for recommendations.*

Introductions: John Barry called the meeting to order at 1:00 pm and asked people on the phone to introduce themselves. People in the room them introduced themselves. John asked if the agenda was OK and no one had a problem with it. Curt reminded people that there is open forum for any issues not on agenda.

Present in the room

Anaya Robinson
Betsy Murray
Bonnie Rouse
Caitlyn Brady
Candie Dalton
Cheryl Vennerstrom
Curt Wolff
Deb Miller
Gerrie Frohne
Grace Herbison
Jeff Epp
Jennifer Martinez
John Barry
Karhy Sargent
Kari Vinopal
Keith Copen
Kelly Tobin
Kirk Miller
Linda Andre
Linda Medina
Linda Skaflen
Mark Simon
Rebecca Sturdevant
Rhyann Lubitz
Roberta Aceves
Ryan Zeiger
Sharita Richmond

On the Phone

Ann Dyer
Brent Salner
Bret Pittenger HCPF
Cathey Forbes
Cheryl Brown
Christina Ulmer
Connor Macleod
David Bolin
Gabrielle Steckman
Hanni Raley
Jason Smith
Jill Schnathorst HCPF
Julie Reiskin
Kelly Morrison
Kendra Sitton
Kevin Smith
Leslie Taylor
Liz Wuest
Margaret Proctor
Maria Rodriquez
Mark Fenton
Mike Neil
Renee Farmer
Stephanie Holsinger
Tim Thornton
Todd Slechta

Excused
Sueann Hughes

PDPPC Attendance Record/Voting Members Linda Skaflen reviewed who has a vote for this meeting and there were no discrepancies.

. **October PDPPC Draft Minutes**: Rhyann said that Julie was out last month and called in but only for a short while. There was a recording tried but it did not work so there are not minutes for October. Rhyann said that there should be a backup plan when Julie is unable to make a meeting. The next meeting Julie will miss will be January. Curt asked if the conference call service had a record option. After discussion and off line research it was determined that there is a record feature and the remainder of this meeting was recorded. We will record moving forward for this purpose. We will also have someone bring a device if we know Julie is not going to be present. Linda said she would bring her device in but it is the same device Roberta had and she was not sure what happened. Linda Medina said she always takes notes which are not as complete as minutes but she will try to take notes in January. The group gratefully accepted Linda's assistance. Linda Medina said she would forward notes she had from October to Rhyann.

and Julie and they would try to put them together. Keith said we should make sure it was noted that the three FMS would post surety bonds regarding tax liability. Keith was asked to put this in email to John, Rhyann and Julie.

IHSS Discussion: Grace Herbison introduced two staff from HCPF Budget office: Jill and Brett with budget called in to have a discussion about IHSS. Grace said that several meetings ago there were follow up questions about the report that was submitted to the legislature at the end of the April about expansion of IHSS. There were back and forth follow up questions and we decided it would be more useful to talk through rather than back and forth

The main question is "How were numbers for pre and post normalized to assure apple to apple comparison?" The answer is "By converting eligibility spans to member months and using FTE instead of unique clients." When you do comparison people want to look at unique client versus unique client. However, each client may have been on Medicaid for different time, one for 8 months and one for 4 months. Alternatively, you have 2 clients for 6 months each. If you put either two together and make that an FTE and you can compare the two equally.
Ryan asked if this would be converting everything to cost per member per month to allow for comparative analysis. Answer is yes.

Brett said he was going to provide Descriptive stats in pre and post period. The descriptive statistics are the median, mean, mode, etc. He said that they needed to group into ranges because you cannot really do this in modes because of differences in clients. He will send out tables later. For EDB in pre period minimum cost per FTE was $106.35; the median cost was $11,614.18 and the average cost was $26,639.59. This is the total cost of Medicaid services for the client. The maximum per FTE was $271,481.88.

Brett said that looking at group mode most clients are in 0-$10K bucket (or 46.9% of sample) in the pre IHSS period. Ryan said he asked for this because he assumed some outliers that might have moved the average. Ryan said originally they saw the same with CDASS (high numbers at first due to unmet need but as access normalized the costs settled done). Ryan asked what assumptions could sway costs to one side or the other.

Jill said that there are outliers on both sides. She said that when you average outliers it might not make any difference. Ryan said when mean and median are so different there is not a normal distribution. Curt said you almost need to bell curve it to get actual median instead of the very high and very low number.

Brett asked is the question can I normalize the distribution? Brett found all clients new in fiscal year and looked back 12 months, then forward 12 months. We can always play with numbers to make them tell different story but when you do a statistically representative sample, this is just it, it is supposed to represent the population as whole. In pre period data skewed to lower figures. You can tell by looking at group modes. In post period the median and mean are much closer with only $10K difference.

Ryan said while it got closer there is still $8K difference. Brett says you have to look at average utilizers per month and cost per month. Look at different times and costs will be different. The point is that the sample was not the first year of IHSS. In CDASS there were unmet needs and all of a sudden the needs are met. This was NOT first year of IHSS. By then IHSS in EBD and CHCBS has matured. Also, making sure that clients existed in both pre and post. We will never be able to find all clients and compare neatly –which is why we have to look at FTE to normalize and be able to compare. There will always be clients with lower needs which explain why we look at things on the average. They isolated clients with first experience in 12/13 when program was mature. This is how they can compare pre and post. The problem with CDASS is that it is often the first Medicaid experience

Ryan asked how many clients we had in the total population sampled. Brett said in EBD we sampled 152
They looked at clients brand new to IHSS and there were 197 of them. In CHCBS they looked at 57 out of 67
There are about 2000 IHSS clients currently.

IHSS EBD Post Numbers:
Min post $2,497.77
Max post $168,823.32
If you look at EBD maximum went down by a lot and minimum went up by quite a bit. Post most clients (19%) were in $30-$40 K. Pre IHSS 47% in $10-20K range.

Linda asked how many of the clients in the pre-$10-20K were in the $30-$40K range in post. It was about 9%

Candie asked if we could get copy of numbers so it would be easier to see—yes—spreadsheet was just done and it will be provided to John Barry who will get it out.

Julie said that even though IHSS was mature we do not know if the people in the program were getting their needs met. Brett said that it is probably true, and HCPF has heard anecdotally that there were barriers to people getting their needs met by agencies under LTHH.

Do we know why people move from one model to another? Answer: When clients actually sub out of LTHH they were in the 20% range in the sample. The cost issue is that most of the clients did not substitute out of LTHH. They were not using it before they went in IHSS and got health maintenance. The question is why? Is the issue that clients did not have a need or is the issue that they did not have the ability to get LTHH due to barriers?
David there is a definite barrier with LTHH because if someone has high CNA needs the agencies cannot find the CNAs to do the work so they cannot take the client.

It is clear that when clients get in a program where they have access to services that they need they will use those services. We have to go with what we see in the past. What we (HCPF) see with LTSS, is that clients do not use LTHH under the agency model but they do use the health maintenance when they get access through IHSS or CDASSS and then you get costs increasing.

Linda S asked how you factored in hospital costs. Answer is that the claims are for all Medicaid claims-so it was factored in unless the client is dual eligible (either Medicare or private insurance for kids). Brett said that they did not see many crossover claims.

CHCBS IHSS Data:
Minimum cost in pre $843
Minimum in post $8,552.52

Median pre $10,367.92
Median post $64,811.37
Mean pre $24,344.27
Mean post $66,104.30

Maximum pre $100,921.16
Maximum post $150,224.04

47% in $0-10K range in pre and in post23% clients 60-70K range.
They normalized to yearly figures but another way is to just divide by 12 to do PMPM (he finds it easier to understand and talk about FTE). They found the same 20% of clients moving from home health in CHCBS.

26% used home health before
74% that used health maintenance did not use home health in pre period

Ryan said that it sounds a lot like what David alluded to—he also said that often the child needs something was not covered under CNA scope of practice so parents had to sign out and do it for free and now they could do the service on the clock. This would include something like g-tube feeding. Parents would have been entitled to a nurse under home health but agencies often could not find nurses. Again, what you can see is if clients gain access and they need the services they will use it. Julie said this was good because it will keep HCPF out of trouble with CMS because HCPF is required to provide all medically necessary services to children.

Linda said that we had no idea of what support they had to get their needs met in the pre group—people that needed care but could not get it through home health for any reason (not in scope of practice, no C.N.A. available, etc.). Was it an elderly parent? Were parents cobbling stuff together? We do not know why peoples' needs were not getting met.

Bret said that the goal of this project was to estimate the cost to implement IHSS services to larger population and look at fiscal cost to state and this is result.

Linda said that 2 waivers were under consideration for IHSS expansion and they are the SLS and CES. She said that both of these waivers have spending caps. She said that it is different because in other programs there are individualized allocations based on need of client, not rigid caps of spending that are not related to the client needs. She did not understand how that factors into expense? Brett said yes they can look at overall cap and that was one

of checks they did. Brett said that right now the clients are not spending all of the money in their capped allocations under SLS. The new assumption is the client may spend more even under the caps if they had access to IHSS. Linda asked if they did they do this work as if there was no cap? Brett said no --they did apply caps in the study but assumed clients would use more of the specific service in the service plan. However the main cost driver is health maintenance because the service is new in these waivers. However while health maintenance is not part of the cap it will take over for long term home health which is currently available as a state plan benefit now.

Ryan asked if they discounted SLS. If the client had personal care authorized, and were using it since personal care would be bundled with health maintenance? Answer was no they did not discount SLS.

Candie asked do we know what all of this means at end of day for IHSS expansion. Grace said that they submitted plan to expand IHSS but they do not have legislative authority or funding authorized. She said higher budget projections would have an impact and make it less feasible. Grace said that they are looking at other venues to expand self-direction such as community first choice. .

Gerrie said she thought we might have more questions to ask after we could review documentation and have time to think about it and wanted to know if we could continue this discussion at the next meeting. Jill and Brett said yes but if we had questions ahead of time it would be great if we could send them to Grace or Rhyann. They are not available in December but could they be there on the 27th of January for that meeting.

Ryan suggested we ask questions by email asked if they could commit to get answers in writing in December. The document will be to us by the end of the week. Agreement was that we were to get all questions to Grace by 11/25. Brett and Jill will answer questions in writing by end of December.

Ryan wanted to know if there were ways to do health risk projections and comparing across like groups. He said that it would have been interesting and wonders if there is way to do this. He would like to know how to look at what would have happened if the clients went to alternative service and truly look at like people in different services. Brett said with the new interface they will be able to do more of that advanced analytics. Ryan said that often what we are lacking is what happens to people with same needs using different programs. Brett agreed we do not have this now.

FLSA Implementation Discussion: Rhyann Lubitz/Bonnie Rouse

John sent out that Department had accepted the PDPPC recommendation to move to FEA only model to comply with FLSA and avoid caps. ***The Public rule review meeting will be on 11/24 at 10 am at 303 East 17th Ave 7C. Leslie asked if there was call in and Rhyann said she is not sure but will check. The rule goes to Medical Services Board on 12/11.***

Rule Content:

1) Removing Agency with Choice (AwC) as a model.
2) Clarifying 2 attendants and require case managers to have enrollment prompts to make sure all CDASS paperwork is completed prior to CDASS approval.

Leslie never referenced definition of employer versus client. Rhyann said under FEA the client is the employer of record. Leslie says you did not talk to Dept. of Labor and their website does not say this. Julie said we had not been employers of record and could not have been until January of this year because we were all under AwC…but we will be under FEA. Leslie said we are bypassing Dept. of Labor.

Jeff Epp said he has been doing research and we will now be household employer IRS bulletin 926 gives all of this information. Leslie says people cannot file IRS forms and do all of that paperwork. Julie said the FMS is doing this for clients—this is what we pay them for under FEA and there is no more work for clients under FEA than under AwC.

Rhyann—Single Entry Point (SEP)s will receive an email this week about next steps. The deadline for all clients to enroll in FEA is 3/15/16. FMS will reach out to each client that needs to move. We also have to help the 23 attendants getting health insurance and reach out to them to get alternative insurance.

Rhyann said that right now wage cap is 39.30 and there will be overtime rate cap which is separate and overtime cap will be $58.95. The FMS has to do new show me the money chart. Anything $39.31-$58.95 is an overtime rate only. Consumer Direct is working on the FEA liability info sheet. They will also host four or more info sessions about the change and they are working to find best way to get word out to stakeholders. They are sending email to staff, FMS vendors, clients, etc. Rhyann wants suggestions of how to get word out to clients.

Rhyann also has contracted with national resource center for participant directed services and they will also do an F/EA informational sheet with liability information. This will be combined with the one that Consumer Direct is creating. Rhyann also asked them who should hold EIN number (client, AR, corporation, LLC) and is waiting for an answer.
Bonnie was at conference last week and met with rep from IRS who specializes in consumer direction. This woman said her contact info could be given out so clients can contact her directly. Bonnie has emailed this person to verify her information can be shared and then once confirmed this information will go to the whole group. People will be able to get IRS questions answered.

Bonnie is working on amending the FMS contracts and is outreaching stakeholders who were in first group to give input. People can contact Bonnie if they want to give suggestions.

Several members of PDPPC said that they appreciated the work done by staff to respond to questions and concerns.

Linda said that we have talked about primary challenges of overtime and asked how does that fit into FEA and who pays? Rhyann said that in FEA overtime is attributable to one EIN number. If client hires someone and wants them to work 42 hours a week it comes out of that budget. The last two hours are overtime. If you pay $20 an hour and they work 42 hours the last two hours will be $30 an hour. The point is that it is attributable to one client.

Renee Farmer suggests ask FMS to get all of the information that will come out to us. Rhyann that will happen but they want to do a wide range of outreach. Renee asked if we could pay overtime as long as we stay within budget we are given. Answer YES.

Caitlin asked if there is predetermined amount for overtime. Answer —it is always 1.5 times more than the regular rate for all hours after 40 hours in a week or over 12 hours in a day.

Leslie said if you look at caps whatever the cap may be on paying overtime-- how is that going to mesh at all with trying to come up with way to cover these people? She said that none of her attendants can get on the “Connect for Health” network. She said that the insurance through PPL is outrageous and that PPL should have done better

shopping. She asked “How do I help my attendant get his cataracts fixed?” She said that this is a person that often works overtime but does not want to be paid for it.

Mark agreed that the Connect website is horrible—he said it is the worst government website ever and he recently helped someone use it and found an individual who will help with a personal problem. He said he would get that information to Leslie.

Jeff Epp said you can negotiate with your attendant and come up with dollar figure they are happy with and do the math to get there as long as you agree on overall wage.

Cathey Forbes said the Dept. of Labor definition of overtime said either 40 hours a week or 12 hours a day. She said people should read the language from Dept. of Labor because there is information about meal and rest periods. This is minimum wage order #31 7ccr1103-1
https://www.colorado.gov/pacific/sites/default/files/Proposed%20Wage%20Order%2031%20Rules%209-30-14.pdf

Keith was concerned about the overtime wages and thought people would take it out of context and look bad. Julie explained it was unlikely that people would be paying at this rate because people are not being paid at the highest rate. She said the highest rate is for unusual circumstances and clients have rates assessed by case managers for reasonableness so having someone go over 40 hours at the highest rate is unlikely.

Someone said that the FMS could report the wages if needed.

Bonnie said average wage is $16.69 an hour ---there can be emergency rates that rarely get paid

Also no matter what hourly rate someone pays clients MUST stay in their allocation.

Debbie Miller said that usually the people at the highest rate is for nursing –most nurses want $50 an hour and you have to negotiate down and they would not get overtime anyway because they are not doing 40 hours, in her case they might come in for something like a catheter change.

Keith said he did not want to have abuse with overtime and said he had a concern about family members but it was pointed out that family members cannot be paid overtime and have always been limited. Keith said we needed to remember this is public assistance.

Maria said that it is a stretch to call this public assistance because as employers we work very hard—it is attendants that want more not us as clients/employers. There are numerous rules and safeguards that keep spending or so called abuse from happening. Maria pointed out that people do a lot of work and pay expenses to be in this program.

Mark said that the underlying issue is that we do not have incentive to try to underuse allocation. He said that if took the audit findings seriously we would be incented to spend every penny because auditor accused case managers of giving too many hours. He said we should give incentives to reduce allocations without causing harm. If I use 80% this year I should not only get 80% next year. Instead I should be rewarded and encouraged for saving 20%. He said that even though we need FAS back in place, we need to figure out how to get other incentives in the meantime.

Leslie said she agreed with Maria –we are employers and we have been told we are employers of record. Maria is right that we do a lot of work, running around, getting papers in order. It is tremendous amount of work and we get paid nothing. This is contrary to definitions in department of labor. Leslie said this is a conflict of law. Rhyann asked Leslie to send her whatever information she has. Leslie said she would do so and said it is on the Dept. of Labor web page.

Maria also had a comment regarding the imbalance of wages. She said in rural areas employers have hard time finding employees and if we are punished because we have not used all of our allocation that is ridiculous. She said something needs to be done to help employers find employees. If we are given less money we get less health care which is ridiculous. Rhyann said she thought Consumer Direct should start teaching clients how to set and negotiate for wages with employees.

IRS Exemptions: Rhyann wanted FMS vendors to talk about spousal exemptions and live in exemptions. She also said they would need to alter the show me the money chart for these folks.

Jennifer PPL:
Tax exemption for employee and employer: The employee identifies oneself based on wage and relationship and may have exemption on FICA and FUTA. There is also exemption on employer, which would change show me the money chart.
Example: CDASS client employs spouse and spouse is eligible and spouse declares it. The spouse no longer sees deductions. If you are eligible you have to take the exemption per PPL and Morningstar. Since the client has a billable rate and they pay FICA and FUTA as well this will leave more in the client allocation.

Jeff says this is a grey area because the W4 allows for more taxes to be taken out. Someone else says the W4 allowance to take more out is income tax not FICA and FUTA.

Jeff said this caused a concern about spouse not getting SSDI if they get hurt. This is a huge deal but it is an IRS regulation so not something we can change. There was a discussion about this in great detail; you will have more money for other attendants also.

Question: Is this for all spouses or only those who jointly files taxes? Answer is it depends on who holds EIN number. If there is AR holding EIN then it is not an issue. No one knew if there was a difference based on whether they file jointly or not. This also includes parents working for children.

There is also another part of the rule which is publication 15 or family employees. In this rule you have to pay social security but not income tax. This is a different exemption than what they are talking about.

The other exemption is live in exemptions:

1) Live in workers can be exempted from overtime rules. This can be done if employee lives with client –they can form an agreement about overtime as long as for every hour worked they do not go under minimum wage. This must be well documented. Employee and employer have to have documentation for all of the hours worked.
2) If caregiver lives with clients they have been exempt from federal taxes since 2014. You do not have a choice. Actually Mark said this has been on books for decade so if people had been paying taxes and are eligible for exemption they can file amended tax returns for past three years and can get refunds. You also have to prove

that you are on qualifying program for disability. You can also write off anything you pay for employees (e.g. parking fees, work clothes, etc.). There is more information on this and many details. For example the definition of permanent is important. You can agree with employee to exempt sleep time from hourly wages but if you do then they have to have a specific amount of time to sleep and separate place to sleep.

All exemptions are for live in—there is nothing for people that do not live together. Mark said this is about when you live in the care providers' home and this is connected to a whole section on foster care payments. The Bulletin is Notice 2014-7.

People should remember that everyone has different circumstances.

Two Attendant Protocol Draft - second review Rhyann sent this out last month and did not receive any comments. She did speak with Kathy Forbes and she had incorporated comments from last month. She did add appeal rights. Julie said she wanted to make sure that FMS cannot drag out process. Rhyann said that was in the rule and being changed in contract where FMS must get all problems with employee application to client in 5 days. Linda said this is a big problem for clients (having FMS drag out the time to process employee). Mark Simon said on page 2 it needs to be made clear to clients that they do not have to use the 2nd attendant if they do not want to. People need to be aware that 2nd attendant may just be neighbor that is available just in case there is an emergency but may never be used. Linda Andre said that is how we always trained people. Mark said there should be way to get exemption if the client can prove he or she is making good faith effort---but cannot find anyone. This led to a discussion of difficulties in finding workers in today's economy.

Maria said that lots of people that want to help but are afraid to fill out paperwork and deal with the government. She said that these people are not going to be employees. She thinks it is not appropriate to have this rule until other problems are ironed out. Maria said another problem is when she finally finds an employee and it takes weeks or longer for PPL to get them in the system.

Renee Farmer has the same problem. She said people do not want to fill out social security number and provide an ID.

Curt said there are companies that help you find people and had has good luck using www.Homecare.com

Linda S. said that finding employees is a big issue for everyone and we need to pay attention to that because unemployment rate is so low.

Maria asked what is use of an attendant that never works? She said online options do not help people that are low income and on Medicaid and do not have computers.

Keith we all have problem with caregivers and recruiting is constant thing. He said if someone does not want to give necessary information do not consider them for employment and move on. He said he found a new resource recently called Colorado Community Health Alliance and this is available to anyone on Medicaid. He spoke to Health Brose at 720-612-6777 she made him aware of all kinds of resources. There are others in the office that can help. He said he learned how you can be reimbursed mileage for driving to medical appointments and how to make that happen.

If there are other comments on this policy people can email Rhyann. Rhyann.lubitz@state.co.us

SLS Update: Roberta still answering questions with CMS.

CDASS Audit: Rhyann provided a handout that detailed 4 CDASS audit recommendations and the implementation steps.

Open Forum

1) Liz Wuest: Received letter in September re .5% increase and it is still not showing up on PPL website. Rhyann said to give her call because maybe case manager did not enter something. Rhyann's number is 303-866-3641.

2) Rhyann: Wanted to let everyone know about FMS account statements. She said that if there is a change to allocations the FMS cannot change earlier months. This had been done before (see previous Debbie Miller public forum comments) and Rhyann said they could not do this. If there is a problem call FMS vendor or let Rhyann know if vendor does not fix the problem.
3) Mark: Feels PDPPC may have taken a wrong turn, has been engaging in inappropriate and disrespectful behavior. For example the two signature issue: People should not vote to prohibit him or anyone else for bringing up any issue. Discussion: We have a policy and procedure in place to make recommendation. We did not follow this. However, we should have gotten legal authority. It is disrespectful when we do not get written response with regulatory authority. Mark also resents he has been attacked verbally and personally. He said he was berated for not being at a meeting that was scheduled on a Jewish Holiday. He also said that people complain that he keeps bringing it up again and again. He said that he is effective because he keeps bringing it (whatever it is at the time) up. He said this issue (2 signatures) was inventing a solution to a problem we do not have. He said is effective because he is persistent. He also said that if do not keep bringing things up again and again they fall off of the agenda. He requests that we develop a tracking sheet and all issues go on the spreadsheet so we all know what is happening with each item and we follow through on all items, whether it is this month or last year. There was a lot of agreement with Mark's comments. Rhyann said she has not received any written recommendations since she has been there. Mark said asked whose responsibility it is to write up recommendation. The answer is that historically it was stakeholder co-chairs. They send to group and it goes to HCPF staff. Curt said he would take blame and he did not know—he thought the vote in July overrode the April meeting decision. Mark said that Caitlin went through all of the minutes to look at how this happened. Curt was given the data.

The meeting adjourned at 4:02 PM

Respectfully submitted by Julie Reiskin